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JUSTICE FOR THE CRAIGAVON TWO

AN ANALYSIS OF INJUSTICE

Dr. Kevin Hearty | JUNE 2015

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'What we have seen today is nothing short of disgraceful and a complete whitewash by the judiciary in order to protect corrupt and dishonest elements within the police. The case of the Craigavon Two will not fade away as is hoped by the establishment but it will continue until justice is done and seen to be done'

Gerry Conlon (RIP) May 2014

FOREWORD

The evidence that convicted the Craigavon 2 is nothing short of disgraceful.

I have no doubts that if the Craigavon 2 had been tried in a proper court, i.e. in front of a Judge and Jury, no honest Jury would have convicted them.

But sadly we don't have Proper courts in Northern Ireland, we have Diplock courts and it's only in these courts that witnesses like M, a.k.a Walter Mitty are creditable and believable.

These courts also ignore the corrupt and Illegal Practices of the Police and Security Services etc.

It is glaringly apparent to me that the only thing that has changed in Northern Ireland is the name of the POLICE.

As the late Gerry Conlon, RIP, said, "This case is not going to go away".

I only hope and pray that it doesn't take 15, 20 or more years for the truth to come out.

I continue to support John Paul and Brendan.

Paddy Joe Hill

Birmingham Six and Miscarriages of Justice Organisation Founder

INTRODUCTION

At approximately 21:45 on the night of Monday 9th March 2009 Police Service of Northern Ireland (PSNI) officer Constable Stephen Carroll was killed in a gun attack in the Lismore Manor area of Craigavon, Co Armagh in the North of Ireland. The attack was attributed to the Continuity Irish Republican Army (CIRA), a militant Irish republican group opposed to the 'peace process' and Good Friday Agreement (GFA) in Northern Ireland. In the days that immediately followed, Craigavon men Brendan McConville and John Paul Wootton were arrested by the PSNI and held on remand until their trial began on 9th January 2012. Following a nine week trial by a non-jury court both men were found guilty and received life sentences – McConville being sentenced to 25 years and Wootton to 14 years.¹ An appeal against these convictions was subsequently thrown out in May 2014.² The failure of this appeal is *not* irrefutable evidence that justice has been delivered; many miscarriage of justice cases – both political and non-political - have failed repeatedly on appeal and have eventually been overturned decades later due only to the persistence of those wrongly convicted and their supporters rather than any belated epiphany within the criminal justice system.³ The Public Prosecution Service (PPS) later appealed the purported 'leniency' of the sentence handed down to John Paul Wootton with the effect that his minimum tariff was increased from 14 years to 18 years in October 2014.⁴ Subsequently the legal teams for both men – commonly known as the 'Craigavon 2' – made representations to the Court of Appeal seeking leave to appeal to the UK Supreme Court in relation to several shortcomings in the case. Following this, the Court of Appeal referred the case to the UK Supreme Court on several points of law.

The Court of Appeal duly certified the question:

Whether, in a case which the prosecution is insufficient to establish any

¹ S McCaffery and M McHugh 'Dissidents Brendan McConville and John Paul Wootton jailed for murder of Stephen Carroll' *The Telegraph* (Monday 21 May 2012, London).

² 'Constable Stephen Carroll murder: Two men lose appeal against convictions' *BBC* 29 May 2014 accessed via <http://www.bbc.co.uk/news/uk-northern-ireland-27604844> accessed 14/03/2015 at 14:26.

³ F Belloni and J Hodgson *Criminal Injustice: An Evaluation of the Criminal Justice Process in Britain* Palgrave (Hampshire, 2000) p 9.

⁴ 'Stephen Carroll murder: John Paul Wootton's minimum jail term increased' *BBC* 14 October 2014 accessed via <http://www.bbc.co.uk/news/uk-northern-ireland-29609672> accessed 14/03/2015 at 14:31.

specified role in a crime by the appellant and there is no direct evidence of any agreement with those involved in the murder, is it proper to permit the drawing of adverse inferences against the appellant by reason of his failure to give evidence, such an inference contributing to the conclusion on the totality of the evidence that the appellant was beyond reasonable doubt involved in the crime in some undefined way?

Despite this question being certified by the Court of Appeal, on May 19th 2015 the Supreme Court refused permission to appeal arguing that:

The application does not raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time, bearing in mind that the case has already been the subject of judicial decision and reviewed on appeal.⁵

This latest development comes on the back of growing disquiet about the conviction of both men expressed by human rights lawyers, politicians and miscarriage of justice campaigners including previous victims such as the late Gerry Conlon ('Guilford 4') and Paddy Joe Hill ('Birmingham 6').

This brief outlines the series of shortcomings in the case that has led campaigners to deem it a miscarriage of justice. It has been drawn from information within the public domain that was disclosed in open court – sources include Justice for the Craigavon 2 campaign literature, court documents, witness dispositions and media coverage of the protracted legal case. The shortcomings identified herein are therefore on the public record for others to substantiate through their own investigation if they so wish. The fact that these shortcomings are on the public record, even if deliberately omitted in mainstream media coverage of the case, makes the refusal by the Supreme Court to look into the conviction of McConville and Wootton all the more curious. In evaluating the case it is useful to bear in mind the definition of miscarriage of justice proffered in the *May Report* into the wrongful convictions of those convicted for the Birmingham and Woolwich bombings in 1974, which states that a miscarriage of justice is a case where 'something goes seriously wrong in the criminal justice process which may have affected the result of the

⁵ 'Supreme Court rejects Winston Rea and Carroll murder appeal bids' *BBC* 19 May 2015 accessed via <http://www.bbc.co.uk/news/uk-northern-ireland-32798174> accessed 20/06/2015 at 13:32.

trial, even though one cannot be sure that it has done so'.⁶ Further definitions relevant to the Craigavon 2 case include the comments of Mantel LJ in the Court of Appeal case of *R v Davis, Rowe and Johnson* that 'a conviction may be unsafe even where there is no doubt about guilt but the trial process has been "vitiated by serious unfairness or significant legal misdirection"',⁷ and in the definition forwarded by miscarriage of justice academic experts Belloni and Hodgson that 'a miscarriage of justice refers to the failure of the criminal process to function in such a manner as to achieve outcomes which are considered just'.⁸

It should be noted, however, that while the concept of miscarriage of justice centres on the issue of process rather than innocence *per se*, both Brendan McConville and John Paul Wooton have continuously and consistently denied any part in the killing of Constable Stephen Carroll. This brief, however, makes *no* assertions of either guilt or innocence on the part of the pair but rather highlights the processes and factors that legitimately give rise to concern over how a verdict of guilt was returned in the case.

Academic scrutiny of miscarriage of justice cases has accordingly identified prevalent 'unfair processes' that include the production of unsound forensic evidence, non-disclosure of evidence, flawed eye witness testimony and mishandling of evidence as characteristics of such cases.⁹ Each of these 'unfair processes' have a particular salience in the case of the Craigavon 2 and the evidence upon which their conviction was secured. This brief will now elaborate on how these 'unfair processes' were integral to deeming McConville and Wootton guilty.

DISSECTING THE CASE

Bizarrely although Brendan McConville and John Paul Wooton have been convicted to life imprisonment at no point has the prosecution case attributed a direct role in the killing to either of the accused. Rather the case against the pair rests on pure conjecture and an attempt to implicate the pair via joint

⁶ J May *Report of the inquiry into the circumstances surrounding the convictions arising out of the bomb attacks in Guilford and Woolwich in 1974 Final Report* (1993-94 HC 449).

⁷ *R v Davis, Rowe and Johnson* [2001] 1 Cr App R 8 AT [56].

⁸ Belloni and Hodgson (2000) p1.

⁹ C Walker 'Miscarriages of Justice in Principle and Practice' in C Walker and K Starmer (eds) *Miscarriages of Justice: A Review of Justice in Error* Oxford University Press (Oxford, 2009) p33.

enterprise on the basis of wholly circumstantial evidence. The conviction of both men by a non-jury court on such weak evidential grounds is symptomatic of a wider 'War on Terror' phenomenon whereby normal legal standards are being departed from by a judiciary keen to be seen to respond robustly to the threat of 'terrorism'.¹⁰ Historically the unquenchable thirst for swift retribution in response to 'terrorism' has underpinned miscarriage of justice in the so called 'Irish cases' of the Birmingham 6, Guildford 4, Maguire 7 and Judith Ward.¹¹ In a post-Good Friday Agreement environment in Northern Ireland and in a post-9/11 'War on terror' climate it appears this unsatisfactory situation has not subsided. In the following sections this brief will interrogate the litany of shortcomings in the process and evidence used to deem Brendan McConville and John Paul Wootton guilty.

WITNESS M

One of the most concerning aspects of the Craigavon 2 case is the centrality of the eye witness testimony of 'Witness M' to the case against Brendan McConville. Both the character and testimony of M have been consistently and seriously called into question from the outset of the initial trial right through to the subsequently dismissed appeal. An objective examination of M and their contribution to the case is strongly suggestive that this has been well reasoned. The first cause for concern regarding the reliability and character of M was sparked not by anything they had said but by the questionable manner in which they became involved in the investigation. M did not come forward to identify Brendan McConville until 11 months after the killing of Carroll, by which stage McConville had been held on remand for a number of months and his name was widely reported in the media as a suspect in the case. More alarming, however, is the fact that M contacted the PSNI to identify McConville in the middle of the night when intoxicated. Despite this M would go on to become a central pillar of the case against McConville.

Concerns sparked by the unorthodox manner of M's approach to the PSNI quickly became magnified when his testimony was put under scrutiny. It became increasingly evident that his evidence was not only contradictory but also unsubstantiated, and in some cases even challenged, by others referred

¹⁰ K Roach and G Trotter 'Miscarriages of Justice in the War against Terrorism' (2005) *Pennsylvania State Law Review* 109 (4) 967-1041.

¹¹ F Belloni and J Hodgson (2000) p 13.

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to in his testimony. Every facet of M's testimony ranging from how he allegedly came to encounter McConville on the night to what McConville was wearing to trivial matters such as how long he had known McConville fell into question upon scrutiny. M testified that he had seen McConville among a group of men as he walked with his partner and her child to his parents house on the evening of the 9th March. Evidence from Witness Z, father of Witness M, cast serious doubt on this account. Z pointed out that M and his parents had previously had a serious falling out over M's partner, thus it was highly unlikely M and his partner would have been walking to M's parents on the evening in question. Moreover it transpired that M's partner's child was unlikely to have been in a buggy as M had claimed due to its age. Perhaps most worryingly is the fact that M's partner, who was present with M on the night in question and specifically mentioned in his testimony, failed to corroborate M's version of events. It may not be surprising that the prosecution did not call her as a witness but questions must surely be asked as to why she was not spoken to by the PSNI until 17 February 2011. Moreover M claimed that on the journey to his parents house on the evening in question he had acknowledged the on-duty security guard at the Craigavon Recreation Centre as he passed the centre. Frank Sheridan, the security guard in question, later testified in court that he had no recollection whatsoever of such an event having happened. Thus from the outset of his testimony it appears that M's account is peppered with contradiction and called into question by others even on seemingly trivial matters. These initial concerns mark the beginning of a more prevalent pattern of obvious shortcomings and contradictions in the testimony of M as his evidence grew increasingly unreliable and the ramifications of his questionable testimony grew in magnitude.

The next shortcoming emerges when M's identification of McConville is closely examined. M claimed to have identified McConville wearing a green knee length army styled coat with a German logo on it standing among a group of men. Accordingly M claimed to have identified McConville among a group of 5 men from a distance of 16 yards. This assertion was robustly challenged by McConville's legal team who pressed M on the competence of his vision. When confronted with this M engaged in a sustained process of denying any impairment to his eyesight and the fact that he required glasses. This catalogue of lies quickly unravelled when other evidence was presented to the court. McConville's legal team produced a prescription belonging to M from an opticians in Lurgan. The prescription confirmed that M did indeed

have impaired eyesight and he was confirmed as suffering from Astigmatism which affects the ability of the eye to focus and from short sightedness that rendered him unable to see things clearly unless they are close to his eyes. The likelihood of M identifying McConville was further dismissed by expert Prosecution witness Dr Page, a consultant ophthalmologist at the Royal Victoria Hospital Belfast, who concluded that someone with M's condition would not be able to identify facial features beyond a distance of 8 yards (Evidence key to the defence case which only emerged during cross examination). M had previously contended that he had been able to identify McConville from a distance of 16 yards – evidence established to be medically impossible. Moreover on the night of the shooting it was raining quite heavily. This poses further questions in relation to M's ability to identify McConville given the adverse weather conditions and the fact that it was also dark. This was reflected in M's initial statement where he confirmed that on the night in question it was 'lashing'. At trial however M changed this, largely to correspond with emerging evidence relating to a jacket recovered from John Paul Wootton's car that was allegedly worn by McConville on the night in question (The allegation later changed to a more general 'McConville's coat' was used in connection with the attack when the original allegation no longer suited the narrative) the coat recovered was found to be dry – it was also brown not green (this is elaborated on later in the brief in relation to the forensic evidence). With the knowledge that the recovered jacket was found to be dry M downgraded his description of the weather conditions to 'it was dark, it was miserable' and later 'it was very dull, erm, it had rained a little bit, not heavy, just a little drizzle'. Discernible from this is M's suggestibility to be led by other evidence in the case and also his penchant for contradicting what he has previously asserted – these would come to epitomise his testimony more generally.

The lack of consistency of M's testimony in relation to the alleged involvement of 'Person A' in the attack also provides cause for concern. At varying stages in the investigative processes M has offered contradictory evidence. M initially claimed that he was 90% certain that A was among the group of men allegedly coalescing around Brendan McConville prior to the shooting. M would later downgrade this to 50% certain in the interview. Besides concerns over how certain M was that A was involved a number of other puzzling contradictions on A's alleged role in the attack followed. At one stage M stated in relation to A's apparent involvement that 'the dogs in the street knew the guy was there'. However on a separate occasion M asserted that:

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I was actually shocked. I was actually shocked at the time to see him there like. I wouldn't have thought it so I wouldn't have... involved, yeah I was actually shocked to find out that he was there, he was actually there.

Perhaps most puzzling is the fact that M alleged he had been intimidated by A and another person after the shooting yet M reached an agreement with the PSNI that A would not be arrested for this. Showing concerning unreliability M also back peddled on the identification of A as his intimidator – this alleged intimidation took place on his own doorstep but M would later assert that he was unable to positively identify A yet would subsequently claim that he could identify McConville from a distance proven to be medically impossible. In addition to these concerns in relation to the activities of A, the PSNI were informed by letter via an anonymous motorist who had driven into the aftermath of an almost identical gun attack on the PSNI some two weeks previous to the attack that claimed Carroll's life, the letter spoke of two males one identified as bearing the family name of A fleeing the scene bearing an assault rifle similar to that used in the Carroll killing. The alleged role of A in paramilitary activity in the Craigavon area and their alleged links to events on the night Carroll was killed are difficult to reconcile with a state narrative that places the blame squarely on McConville and Wootton whilst seemingly turning a blind eye to A. Given the continuous stream of revelations about the immunity granted to state agents within paramilitary groups in the past, it does not stretch credulity to ask if a similar dynamic is at play in the Craigavon 2 case. (It was asked in court by defence counsel if A was working as a police agent. A senior member of the PSNI denied this, but his answer may be disingenuous and the defence question asked wrongly. All agents in republican paramilitary groups fall under the control of MI5, is A a state agent may have been a question to remove this ambiguity.)

In addition to inconsistencies on major aspects of the case against McConville, M's testimony on peripheral matters was completely devoid of any consistency. M would claim that he had spent one hour and forty five minutes in his parents home yet according to another account given to DCI Harkness by M he had returned home by the same route forty minutes later. Moreover according to the timings that frame M's initial account of the incident given to DCI Harkness (relating to alleged intimidation by A and another person) M would have returned home from his parents home even before the brick used to lure the PSNI into the area was thrown. M had also said that when McConville allegedly

acknowledged him on the night of the shooting two men from the group of five had walked away, yet in a later statement M claimed that when McConville acknowledged him the other four men were still present. Added to this is the glaring inconsistency in the length of time M claims to have known McConville which has ranged from all his life to ten years to being barely acquainted with him.

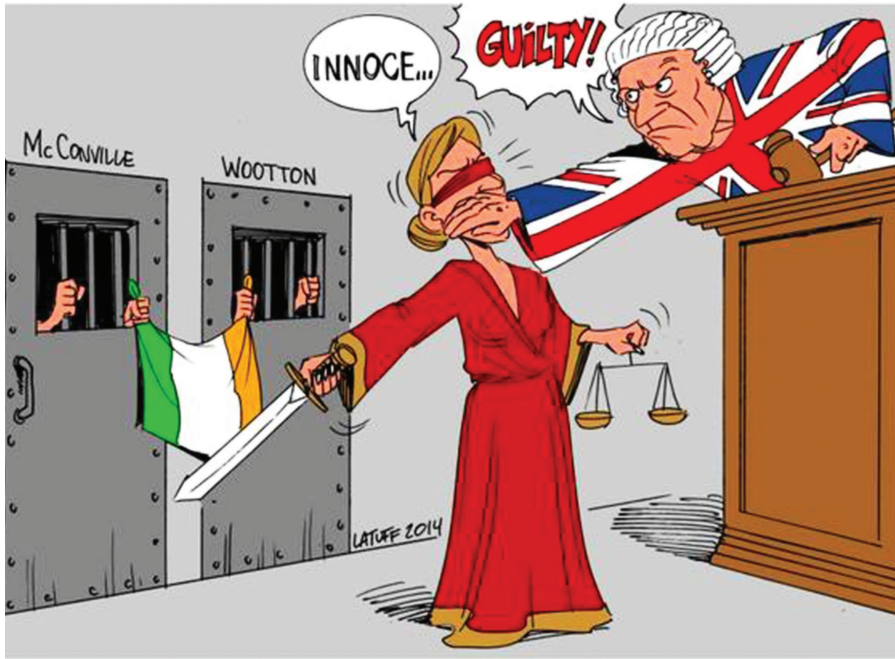
M has also been proven to have financially benefited from his involvement in the case. If this fact alone does not raise concern then his evasive approach to disclosing any benefits accrued since entering the witness protection scheme certainly should. Upon entering the scheme M was obliged to provide the PSNI with notification of any outstanding debts he had amassed. Later in the investigation it emerged that M had failed to disclose one debt of £10, 800. When pressed on this M asserted that at the time it was his understanding that all his debt had been cleared – in short this can be read as evidence that the PSNI had cleared M's previous financial debts. In addition to this it transpired that M was in receipt of a weekly wage of £210 per week from the PSNI via the witness protection scheme. M's rent and childcare costs are also provided for through the scheme. On top of this M has secured loans of £3,250 and £2,000 from the PSNI. Furthermore overseas holidays for M and his children have also been facilitated by the PSNI. Given the significant advantages that M has enjoyed since his participation in the case as the star witness against McConville it is baffling that he should claim that he received '100% no favours' when asked in court about services rendered to him by the PSNI. That any witness integral to a politicised case should be enriched to such an extent through their involvement in the case is concerning but when one factors M's penchant for contradiction and prevarication as well as his previous socio-economic disadvantage and vulnerability through addiction into the equation these concerns are amplified. It beggars belief that the often contradictory and incoherent evidence of such a vulnerable and demonstrably suggestible person would be given credence in a court of law much less act as the primary basis upon which guilt was determined. The inability to allow such considerations to impact upon the outcome of the case cannot be divorced from the fact that the trial was presided over by a single judge (who had at one point bizarrely asked prosecution counsel if he could draw an adverse inference relating to a particular matter in the case) rather than being subjected to the rigours of trial by jury. One may infer that had a jury been afforded the opportunity to evaluate and scrutinise M's testimony the weight and credibility attached to it may have diminished somewhat.

WITNESS Z

Following the conviction of McConville and Wooton, and in the process of their appeal, a witness identified as Witness Z came forward. Z is the father of M and offered damning testimony that suggested M was a 'Walter Mitty' character and a compulsive liar. As alluded to in the previous section, Z single-handedly dismantled much of M's testimony. The emergence of Z initiated a disturbing series of events that would call the integrity of the entire criminal investigation of the case into question. Z was arrested by the PSNI and taken to Dungannon PSNI station which, somewhat conveniently, does not contain video recording facilities as Antrim Serious Organised Crime Suite. While in custody the 'security services' applied pressure on Z to retract their evidence and, even more sinister some may argue, tried to coerce Z into framing a human rights lawyer for criminal offences. When Z rightly refused to engage in this perversion of justice the 'security services' threatened to discredit him. This dubious course of action was not isolated as it later transpired that the same 'security services' had both Z and the human rights lawyer in question under covert surveillance.¹² On the back of this, and given the dangerous precedent of this activity being directed against human rights lawyers in the North of Ireland,¹³ the legal representatives of the men were forced to lobby the United Nations for protection. Having failed to enlist Z in their campaign of sabotage, the 'security services' proceeded to make the outlandish claim that defence lawyers for the men had taken Z's affidavit at gunpoint in cahoots with the IRA. The interference of the 'security services' in the case did not stop there. It is alleged that the 'security services' had conspired with a prison staff member based at Maghaberry prison to plant evidence putting McConville in the frame for targeting the prison governor Steve Rodford in McConville's cell. This can only be seen as an attempt to create 'bad character' evidence in a bid to add notions of weight to the circumstantial evidence presented against McConville at trial. Equally concerning is the fact that the PSNI team investigating the killing of Carroll were tasked with investigating the attempted fit up at Maghaberry rather than the CID based as Lisburn as would be normal procedure – as a follow on there remains the unexplained matter as to why the PSNI were pushing the Public Prosecution Service to have McConville charged in relation to this matter. The activity of the 'security services' is indeed concerning and points more fundamentally to

12 C Young 'Police 'tried to sabotage' appeal in constable murder case' *Irish News* (Thurs 30 Apr 2013, Belfast) 8.

13 D de Silva 'The Report of the Patrick Finucane Review' HMSO (London, 2012).





the inability of policing accountability bodies in Northern Ireland to hold such actors to account, particularly in their activities that are directed against those in opposition to the political process in Northern Ireland.¹⁴ That they may have enlisted the co-operation of those in other state agencies (ie the prison service) with a view to influencing the Carroll investigation is further concerning.

THE TRACKING DEVICE

A number of similar shortcomings also emerge upon scrutiny of evidence obtained from a tracking device attached to John Paul Wootton's car. In addition to issues of deletion and destruction, there are several general flaws in the narrative proffered by the state against John Paul Wootton. According to this narrative Wootton served as a 'getaway driver' in the aftermath of the attack and is alleged to have dropped McConville off at his home following the attack – the latter being premised on the fact that Wootton's vehicle passed by McConville's home on the night in question. When subjected to scrutiny the foundations of this state narrative weaken.

Firstly Wootton's car was not parked in the immediate vicinity of the attack but was approximately a quarter of a kilometre away in the middle of an adjacent housing estate. Secondly the tracking device attached to the vehicle confirms that the car did not leave the area until ten minutes after the attack. This is a curious course of action to be taken by an alleged 'getaway driver' – instead of making a hasty escape as one would assume logical, according to the state case armed gunmen lingered openly in the middle of a housing estate ten minutes after a gun attack before casually exiting the area. Moreover while the state emphasise how Wootton's vehicle passed close by McConville's home in the aftermath of the attack what it fails to reveal is that due to the layout of the area there were only two routes available for Wootton - both of which passed near to McConville's home. In addition to this, claims that McConville was dropped off home by Wootton need to be further questioned given that the tracking device – capable of detecting when doors are opened and closed – failed to indicate that anyone had exited the car near to McConville's house. It must also be noted that the tracking device also failed to place Wootton's vehicle anywhere near the scene of the recovery of a firearm in the aftermath

¹⁴ K Hearty 'A Shared Narrative? A Case of the Contested Legacy of Policing in the North of Ireland' (2014) *British Journal of Criminology* 54 (6) 1047-1066.

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of the attack. Basically what has been presented in court as irrefutable evidence of Wootton's role as a 'getaway driver' is in fact a mixture of conjecture and supposition that fails to substantively point to any conclusion other than the rather underwhelming scenario of a young man driving casually around the area he lives in. What the evidence *actually* reveals and what it has been *manipulated* to reveal therefore differ drastically.

Flaws in the narrative proffered by the state are only one aspect of the problems with the vehicle and tracking device. When Wootton's car was taken away for forensic examination there was an unexplained break from established protocol. Instead of waiting for army technical officers to examine the car for viable devices a civilian pick-up company were instead enlisted to perform the removal. Given that it would later transpire in court that the tracking device had been compromised by the army and/or 'security services' the suspicion reigns that army technical officers were not called in to examine the car as the army had already accessed it prior to removal. The deletion of data from the tracking device was later established by an expert witness to be deliberate and has remained a curious, unexplained action. One may infer that had the data corroborated the argument of the state that Wootton was a 'getaway driver' then the most logical course of action would have been to produce it in court and strengthen the prosecution case. The fact that the data was deliberately deleted rather than produced in court is suggestive that the evidence did not in fact substantiate the state's case against Wootton. May it in fact have contradicted the state case? Parallels can be drawn with the collapse of a case against Lurgan man Ryan McKenna in October 2014. McKenna was facing three charges of conspiracy to cause explosions, possessing explosives with intent to endanger life or damage property and possession of explosives under suspicious circumstances but the case collapsed when the prosecution offered no further evidence against the accused.¹⁵ It was later revealed by McKenna's solicitor that the collapse of the case stemmed from the destruction of SAS briefing notes, radio logs and notebooks related to the event and also from the deletion of certain parts of a statement made by a soldier. In both cases there is a clear pattern of the 'security services' effectively manipulating evidence through deletion and destruction to fit with their own version of events.

¹⁵ 'Mortar bomb accused is acquitted' Lurgan Mail 1st October 2014 accessed via <http://www.lurganmail.co.uk/news/local-news/breaking-news-mortar-bomb-accused-is-acquitted-1-6331742> accessed 13/06/2015 at 15:11.

Rather than being an inference bordering on the conspiratorial, the precedent of the 'security services' deleting evidence that compromises their version of events does exist. For example it has recently emerged that following the shooting of 17 year old Michael Tighe in Lurgan in 1982, the 'security services' deliberately destroyed a recording of the event extracted from a bugging device secreted in the hay shed where Tighe was murdered and Martin McAuley wounded and arrested.¹⁶ The motivation for destroying the evidence was that it belied RUC claims that they only opened fire upon Tighe and McAuley when the pair confronted officers while bearing firearms.¹⁷ This course of sabotage that ultimately resulted in the conviction of McAuley (since quashed) occurred with the willing acquiescence and encouragement of senior RUC figures. In a similar vein it recently transpired that a weapon used in a loyalist attack on Sean Graham's bookmakers on the Ormeau Road in Belfast in 1992 was said to have been lost by the security forces investigating the murders only for it to turn up years later as an exhibit in the Imperial War Museum in London.¹⁸ This revelation was accompanied by several others in relation to missing, compromised and destroyed evidence in order to protect the identities and roles of state agents within paramilitary organisations.¹⁹

This culture of cover-up, conspiracy and sabotage has been the proven *modus operandi* of the 'security services' and RUC Special Branch.²⁰ Given the flaws in the policing accountability mechanisms in the North of Ireland and their

¹⁶ 'Martin McAuley: 'Grave misconduct' as weapons offence quashed' *BBC* 10th September 2014 accessed via <http://www.bbc.co.uk/news/uk-northern-ireland-29142662> accessed 23/05/2015 at 15:02.

¹⁷ V Kearney 'One of 'Columbia Three' has weapons conviction quashed' *BBC* 20th May 2014 accessed via <http://www.bbc.co.uk/news/uk-northern-ireland-27493189> accessed 23/05/2015 at 15:04.

¹⁸ J Awford 'Assault rifle used in seven unsolved murders and betting shop raid in Northern Ireland is discovered on display at Imperial War Museum exhibition' *Daily Mail* 29 May 2015 accessed via <http://www.dailymail.co.uk/news/article-3102266/Assault-rifle-used-seven-unsolved-murders-display.html> accessed 31/05/2015 at 12:34.

¹⁹ 'Britain's Secret Terror Deals: 'Truly disturbing' BBC Panorama allegations of collusion must be fully investigated, says Amnesty International' *Belfast Telegraph* 29 May 2015 accessed via <http://www.belfasttelegraph.co.uk/news/northern-ireland/britains-secret-terror-deals-truly-disturbing-bbc-panorama-allegations-of-collusion-must-be-fully-investigated-says-amnesty-international-31261593.html> accessed 31/05/2015 at 12:38.

²⁰ Committee on the Administration of Justice *The Apparatus of Impunity? Human Rights Violations and the Northern Ireland conflict: A narrative of official limitations on post-agreement investigative mechanisms* Committee on the Administration of Justice (Belfast, 2015); J Stalker, *Stalker* (Harrap 1988) 27.

inability to encompass the reserved matter of 'national security',²¹ one cannot discount the possibility that such a culture remains. The latter assertion must also be seen in the context of significant institutional crossover from the RUC Special Branch into the PSNI.²² If the 'security services' and RUC Special Branch elements had little qualms about the innocent being murdered in the 'dirty war' then one may infer that they would similarly have little hesitation about framing the innocent amidst current post-9/11 'war on terror' fervour where legislation like the Regulatory of Investigatory Powers Act (RIPA) remains insufficient to adequately safeguard against the misuse of Covert Human Intelligence Sources (CHIS).²³ This latter assertion must be seen in the specific context of the Craigavon 2 case whereby a fingerprint retrieved from the AK47 rifle seized by the PSNI in a follow up operation was demonstrably proven to not belong to either Wootton or McConville but to a third party – a party believed by some to be a state agent and to be intricately involved in the commission of the fatal attack that claimed Stephen Carroll's life.

THE BROWN JACKET

The prosecution also offered DNA retrieved from a brown jacket in Wootton's car as part of their case against McConville. The contention of the prosecution was that the coat belonged to McConville, had been worn by him during the shooting and was later found in Wootton's car as the 'get away' car. The brown jacket found in Wootton's car did indeed contain traces of McConville's DNA but, like much else in the case, this was far from unquestionable evidence of McConville's alleged guilt.

While the prosecution used the presence of McConville's DNA to link him to the jacket as its owner, McConville offered a competing explanation. McConville did not contest that his DNA was found on the coat nor did he contest the fact that he had been in Wootton's car before. Rather McConville asserted that as a friend of Wootton he had been in his car on numerous occasions and that

²¹ M Beyers, 'Policing Accountability' in Committee on the Administration of Justice, *Mapping the Rollback? Human Rights Provisions of the Belfast/Good Friday Agreement 15 Years on* (Committee on the Administration of Justice 2013) 90; Committee on the Administration of Justice, *The Policing You Don't See: Covert Policing and the Accountability Gap Five Years on From the Transfer of 'National Security' Primacy to MIS* (Committee on the Administration of Justice 2012) 5.

²² CAJ *ibid.*

²³ C Hirsch, 'Policing Undercover Agents in the United Kingdom: Whether the Regulation of Investigatory Powers Act Complies with Regional Human Rights Obligations' (2001) *Fordham International Law Journal* 25 (5) 1282.

this could offer an explanation for how his DNA came to be on the brown jacket. McConville's explanation certainly seemed to chime more strongly with the actual DNA evidence than the prosecution's contention did. There was no trace of McConville's DNA found around the collar, cuffs or in the pockets of the brown jacket – something that would be expected if he were the habitual wearer of the jacket as its owner. Moreover the relatively low trace of McConville's DNA found on the jacket (which was approximately 200 cells put in context by the fact that 10,000 cells can fit onto a pinhead) suggested that it was more conducive to having been found as a result of DNA 'shedding' by McConville rather than as a result of him owning/wearing the jacket. Simply put, it was established in court through questioning of an expert witness that the DNA in question could easily have come to have been on the coat as a result of a sneeze, shedding of other bodily fluids like saliva or even simply from simple skin contact via McConville touching the jacket. Given that McConville was a friend of Wootton and had, by his own admission, been in Wootton's car on several occasions the presence of his DNA on the brown jacket could be equally, if not more so, attributable to any innocent explanation rather than it being there as a result of him wearing the jacket during the attack on the PSNI the night Carroll lost his life. An expert witness readily accepted such a possibility at trial. The same expert witness concluded that the DNA did not establish when the coat was worn, conceding at trial that 'I cannot say when the DNA would have been deposited onto the jacket'. In a further concession of the circumstantial nature of the DNA evidence found on the jacket the expert witness testified that there were mixed profiles of at least three other peoples DNA found on the jacket with this figure potentially rising to as many as eight people. Drawn from the expert witness evidence above then it cannot be established that McConville even wore the jacket, never mind wore it on the night in question. This seriously undermines the prosecution case that implicates him in the attack on the basis that he is alleged to have worn the jacket on the night in question.

Other issues arise that also question the value of the brown jacket evidence against McConville. When the jacket was retrieved from Wootton's vehicle it was found to be completely dry. Given that there was a considerable down pouring of rain on the night of the attack this actuality does not correlate with the state assertion that McConville was wearing it while taking part in the attack. Moreover when the PSNI searched the homes of McConville and Wootton with instructions to seize any items of clothing and footwear that were muddy or

wet, they failed to recover any such items. The absence of such items is again difficult to tally with the case presented against both men. It was also conceded by the expert witness that gun powder residue found on the jacket may have come from a non-firearm source. Even if the residue was from a firearm anomalies still persist. For example the residue found on the jacket was not of the type that would have been emitted by the rifle used in the attack. If the residue *was* from a firearm it was therefore *not* from that which had been used in the attack thus diminishing its value as evidence of McConville's involvement in the killing.

Perhaps most concerning about the forensic evidence found on the jacket is the fact that the prosecution influenced the nature of the tests conducted by the expert. Following communication from the prosecution in which they outlined that their case was that McConville owned the jacket despite his denials, the thrust of the tests conducted by the expert appears to have moved from trying to establish who had worn the jacket to comparing the propositions that McConville had regularly worn the jacket and subsequently that this reflected the prosecution case that McConville owned the jacket.

Each of these flaws with the forensic evidence is concerning and calls the basis for deeming both men guilty into question. Such shortcomings are not new to miscarriage of justice cases nor are they confined to the Craigavon 2 case. Validation of such concerns can be seen in the view of miscarriage of justice experts Russell Stockdale and Clive Walker when they cautioned:

Enduring confidence in verdicts which rely heavily upon forensic science can only be achieved if the evidence, and the procedures and results which lie behind it, are thoroughly scrutinised, rigorously checked, properly clarified and carefully balanced. Clearly, the proper time for all of this arises before the verdict is reached and not in a piecemeal fashion afterwards.²⁴

The case has also been notable for extensive non-disclosure of evidence through various means. For example large sections of M's witness statement to the PSNI had been redacted. This added to the culture of cocooning M from sufficient scrutiny in court and in the public domain – an anonymity order protecting M's identity was issued and an order allowing M to give their

²⁴ R Stockdale and C Walker 'Forensic Evidence' in C Walker and K Starmer (eds) *Justice in Error* Blackstone Press (London, 1993) pp. 75-100 at p.83.

evidence via video link was granted. No assessment of M's general character could therefore be made nor could any potential contradiction in their account be made visible to members of the public aware of such contradiction. The failure to allow an open cross examination of M also removed the scope to scrutinise their demeanour in court, compounding the more fundamental problem of trial by a non-jury court. On the latter point the enormity of this problem can be seen through the absurd spectacle of Lord Justice Girvan at one point asking a prosecution barrister if he could draw an adverse inference against McConville due to the PSNI's failure to conduct an identification parade – something that left the barrister visibly bemused.

These shortcomings compounded the fact that the prosecution secured a Public Interest Immunity Order on over one hundred evidential items relevant to Wootton and McConville's defence. Non-disclosure has been a notable factor in several historic miscarriage of justice cases including the Birmingham 6, Guildford 4 and the wrongful rape conviction of Stefan Kiszko.²⁵ Systematic non-disclosure, as seen in the case, can skew the case against the defence and in favour of the prosecution yet it is readily defended on 'national security' grounds.²⁶ In the more recent 'war on terror' climate this has allowed a more general belief that transparency and rigour should be sacrificed to advantage the 'security services' at the expense of human rights protections to seep slowly into the criminal justice system.²⁷ This has recalibrated the state approach from one premised on a 'rule of law' model to one reliant on extraordinary and exceptional measures and processes to curb the threat of 'terrorism'.²⁸ Essentially 'evidence' is forwarded by the 'security services' but is not presented in open court rendering it unchallengeable by the defence or any objective party and leaving judges with the distinct impression that they should merely accept the word of the 'security services' over that of the alleged 'terrorists'. Simplistically one could argue that this equates one part of the state system asking another to accept its word on the case without having to substantiate it with evidence that is open to scrutiny. In the North of Ireland the most notable

²⁵ Belloni and Hodgson (2000) p128.

²⁶ P O'Connor 'Prosecution Disclosure: Principle, Practice and Justice' Evidence' in C Walker and K Starmer (eds) *Justice in Error* Blackstone Press (London, 1993) pp 101-129 at p.113.

²⁷ P Hillyard, 'In Defence of Civil Liberties' in P Scraton (ed) *Beyond September 11: An Anthology of Dissent* Pluto Press (London, 2002) pp. 107-113 at p.112.

²⁸ A Guelke *Politics in Deeply Divided Societies* Polity Press (Cambridge, 2012) at p.36.

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manifestation of this approach was the non-disclosure of intelligence based evidence in the case against Martin Corey who was held on the revoking of life licence for almost 4 years before being released conditional to a virtual gagging order. In light of any objective scrutiny (even retrospectively as in the Corey case) the potential for abuse of process cannot be dismissed, especially when there is an established and well proven record of such abuse in the North of Ireland. Moreover the combination of evidential shortcomings in the Craigavon 2 case is alarming given that empirical evidence is indicative that, as miscarriage of justice experts Belloni and Hodgson observe, such factors often underpin miscarriages of justice:

Flawed forensic evidence, the misuse of forensic data by prosecution and the withholding of critical forensic evidence from the defence were either the main or contributing factors in a number of well known cases of wrongful conviction.²⁹

29 Belloni and Hodgson (2000) at p.162.

CONCLUSION

This brief set out to catalogue the shortcomings in the judicial process used to convict Brendan McConville and John Paul Wootton for the murder of PSNI constable Stephen Carroll. It is worth reiterating that the purpose of this brief is *not* to assert that McConville and Wootton are innocent or that they are guilty but rather its intention is to critique the *process* through which a verdict of guilt was reached. That process has been demonstrably shown to have been compromised throughout its duration on many levels including the flaws in eye witness testimony, the deliberate destruction of evidence, the systematic non-disclosure of evidence and the flaws in forensic evidence offered as part of the case against the pair. These procedural shortcomings are framed by broader contextual factors that include a general invisibilisation of police wrongdoing in a post-Patten climate, the inability of policing accountability mechanisms in the North of Ireland to provide the necessary oversight in the areas of 'national security' and the activities of the 'security services' and a more global post-9/11 'War on Terror' climate where extra-legal and exceptional measures and processes are increasingly utilised to combat the threat posed by 'terrorism' – or as the discourse has recently shifted to 'extremism'. Shortcomings are not an unfortunate aberration in the case but come to more fundamentally define the entire case from start to finish. Most concerning is the fact that, given the involvement of agencies spanning from the 'security services' to the PSNI to members of the prison service in the effective subversion of due process, interference in the case to secure a guilty conviction has been proven to be systematic and contrived rather than coming about as a by-product of unfortunate or somehow innocent inadequacies. Were such effort expended to secure a guilty conviction in a non-politicised 'normal' criminal case there would doubtless be serious questions raised of the state agencies involved in such a protracted campaign of sabotage and of the judicial process that returned a guilty verdict in the face of this dubious conduct. The Craigavon 2 case is, however, no ordinary case and is symptomatic of the politicised context in which it unfolded both locally, nationally and globally. The political dimensions to the case, twinned with the historic track record of miscarriage of justice in cases of this nature and wider human rights concerns stemming from an increasingly 'free hand' bestowed on intelligence agencies, merely adds to rather than detracting from concerns about the safety of the conviction of the men.

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This brief opened with a quote from miscarriage of justice campaigner and champion of the Craigavon 2 case, the indomitable late Gerry Conlon. In drawing its conclusion it is apt to also conclude this brief with his remarks:

'We can't have innocent people going to jail and 15 years down the line them being released and their lives ruined. But you have to have the courage of your convictions to stand up for what you believe in and I believe a miscarriage of justice took place here on the basis of all the evidence I have read. Would I want someone I know to stand trial on this evidence? The answer is no. Everything I have read leads me to believe this is a miscarriage of justice. It runs on a parallel with Guildford, Woolwich and Birmingham'

Roe 4
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Ballinderry Upper
Lisburn
Co. Antrim
BT28 2PT

A chara,

I am sure you are aware of the cases of the Guildford Four and the Birmingham Six; Gross miscarriages of justice which saw innocent men spend a long time wrongfully imprisoned.

We, too, find ourselves in a similar situation. In 2012 we were given life in prison for something we did not do. In 2009, Stephen Carroll, a member of the PSNI, was shot dead in Craigavon, Co. Armagh. We were subsequently arrested, held for interrogation for two weeks and then sent to prison where we remain to this day.

The process we were subjected to was fraught with inadequacies in terms of fairness. Anonymity Orders, Public Interest Immunity Certificates, inconclusive forensics, shoddy eye-witness evidence and a media frenzy coalesced to deliver the injustice we now face.

You may already be aware of our case. Our families and supporters have been engaged in a campaign seeking justice for the past number of years now (the campaign is called "Justice for the Craigavon Two"). Our case had drawn attention and comment from a number of high profile individuals and organisations throughout the world including Paddy Hill (Birmingham Six), Gerry Conlon (Guildford Four), JENGbA, Mick Wallace TD, Clare Daly TD, Eamon O'Cuiv TD, Maureen O'Sullivan TD, Greg Sean Canning (FFAI Co-chairman AOH US), Michael Mansfield QC, Monsignor Raymond Murray, Jim Gibney (Sinn Féin), Pat Sheehan (Sinn Féin), Brian Gormally (Committee on the Administration of Justice), the Irish Law and Democracy Committee, Miscarriage of Justice Organisation, Miscarriage of Justice UK, Cage and many more.

We ask simply that you take some time to look at our case. We are confident that only a cursory read through the material will illustrate serious concerns with our unjust conviction.

Material can found on our campaign website www.jftc2.com, on Facebook at facebook.com/Justice-For-The-Craigavon-Two and on twitter @craigavon2.

We appreciate any help you can give us.

Yours Sincerely,

John Paul Wootton & Brendan McConville

CAMPAIGN UPDATE 2016

Seven years after their arrest the Justice for the Craigavon Two campaign continues to raise awareness of this gross miscarriage of justice and to fight for the freedom of Brendan McConville and John-Paul Wootton. Since May 2015 when the Supreme Court rejected an appeal application, legal teams for the two men have continued to fight for justice and are in the process of submitting an application to the Criminal Cases Review Commission (CCRC) and in that process have been considering several recent developments including:

JOINT ENTERPRISE

In February 2016, the Supreme Court declared that a key test imposed by judges in assessing guilt in joint enterprise cases – where the accused acts in conjunction with the killer but does not strike the blow that causes death – had been incorrectly applied. In the case of the Craigavon Two Joint Enterprise was used to secure a conviction and life sentences against the two men, even though no role was ever attributed to Brendan or John-Paul. Both legal teams are in the process of carefully considering this new legislative development.

R V DUFFY, PAUL AND OTHERS (2015)

In October 2015 the case of R v Duffy, Paul and others collapsed after the Crown stated that they were “offering no further evidence against any of the accused”. In this case the judge ordered that sensitive information about surveillance devices used must be shared with the defendants. However the prosecution was unable to comply with the orders and the test for prosecution was no longer met.

In the case of the Craigavon 2, neither legal team was granted access to the tracking device technology, technology that was subsequently found to have data purposefully deleted shortly after the attack. The crucial difference here is that the Duffy case collapsed on the basis of non-disclosure of evidence while the Craigavon 2 case continued without disclosure as well as corruption of evidence. Again as with the recent changes in joint enterprise the legal teams for both Brendan and John Paul will explore the potential impact of this ruling.

As the legal teams continue to fight for justice for Brendan and John Paul, we will continue to support that fight through increasing public awareness and lobbying for support. If you would like further information on the case or would like to help us please get in touch via any of the methods below:

Thank you, Justice for the Craigavon Two



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www.jftc2.com

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